

IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI

HEALTH MIDWEST,
a Missouri nonprofit public
benefit corporation,

Plaintiff,

vs.

JEREMIAH W. (JAY) NIXON,
in his official capacity as the
Attorney General for the State of Missouri,

Defendant.

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DEC 04 2002
MO. ATTORNEY GENERAL

Case No. 02CV326118

MOTION FOR PROTECTIVE ORDER
WITH SUGGESTIONS IN SUPPORT

Pursuant to Mo. R. Civ. P. 56.01(c), plaintiff Health Midwest respectfully requests this Court enter a Protective Order regarding any information deemed confidential or proprietary by Health Midwest or HM Acquisition, L.L.C. and its parents and/or subsidiaries, including HCA, Inc. (collectively "HM Acquisition"). In support of its Motion, plaintiff states as follows:

1. On November 22, 2002, Health Midwest entered into an Asset Purchase Agreement (the "Agreement") with HM Acquisition for the sale of Health Midwest's assets for the price of \$1,125,000,000.
2. Health Midwest instituted this action to obtain clarification regarding the rights and obligations of itself and the Attorney General in review of the proposed transaction and in the determination of how the proceeds of the sale can be used.

3. In an effort to facilitate the sale and participate in good faith in the review process conducted by the Attorney General's office, Health Midwest has provided to the Attorney General a large number of documents relating to the sale.

4. Despite the fact that Health Midwest and HM Acquisition have already provided the Attorney General with a large number of documents related to the sale, Health Midwest and HM Acquisition anticipate that the Attorney General will request further documents, some of which contain confidential and proprietary information relating to Health Midwest or HM Acquisition.

5. Such confidential and proprietary information is not publicly available, and Health Midwest and HM Acquisition have an obligation to keep much of the information confidential. (Exhibit A, Hiersteiner Affidavit ¶ 4). Disclosure of this information, or any other confidential information of Health Midwest or HM Acquisition, would put Health Midwest and HM Acquisition at a competitive disadvantage and cause "oppression and undue burden" to Health Midwest and HM Acquisition. Mo. R. Civ. P. 56.01(c) (court may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense"). (Hiersteiner Affidavit ¶ 5).

6. Health Midwest has voluntarily provided the Attorney General with a large number of documents related to the sale. (Hiersteiner Affidavit ¶ 3). The Attorney General will not be unfairly prejudiced if the Court orders that confidential and proprietary information Health Midwest or HM Acquisition seeks to protect are provided to him, but not released to the public.

8. Missouri Rule of Civil Procedure 56.01(c) expressly provides for a Protective Order that “a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way.” That section recognizes that Health Midwest and HM Acquisition have a protectable interest in their confidential commercial information. Trial courts have a duty to “make appropriate orders . . . to protect [parties] against unwarranted public disclosure.” Welsh v. Dean Witter Reynolds Org., Inc., 657 S.W.2d 27, 30 (Mo. Ct. App. 1983).

9. Health Midwest respectfully requests a Protective Order that prohibits defendant from publicly disseminating any confidential information of Health Midwest or HM Acquisition. Health Midwest and HM Acquisition are willing to participate in an in-camera review of any confidential information should the Court believe such review is necessary. Further, this Order would not prevent the Attorney General from seeking an order of this Court regarding the confidentiality of any information designated as such by Health Midwest or HM Acquisition.

10. The proposed Protective Order will limit dissemination of the information to the Attorney General and designated representatives assigned to this matter. Further, the proposed Protective Order contains provisions controlling the use of the information in this litigation and ancillary matters. The proposed Protective Order balances the requests of the Attorney General and the need to maintain the confidentiality of the information.

WHEREFORE, for the above reasons, Health Midwest respectfully requests this Court enter the Protective Order attached hereto as Exhibit B.

Respectfully submitted,

ROUSE HENDRICKS GERMAN MAY PC

By Charles W. German *by JBD*

Charles W. German MO #26534

Lawrence A. Rouse MO #25064

Matthew P. Hamner MO #51075

Ann E. Agnew MO #47250

One Petticoat Lane Building

1010 Walnut, Suite 400

Kansas City, MO 64106

Tele: (816) 471-7700

Fax: (816) 471-2221

SEIGFREID, BINGHAM, LEVY, SELZER & GEE
P.C.

Paul Schepers MO #32550

Douglas Anning MO #43757

2800 Commerce Tower

911 Main Street

Kansas City, MO 64105

Tele: (816) 421-4460

Fax: (816) 474-3447

BLITZ, BARDGETT & DEUTSCH, L.C.

James B. Deutsch MO #27093

Marc H. Ellinger MO #40828

308 High Street, Suite 301

Jefferson City, MO 65101

Tele: (573) 634-2500

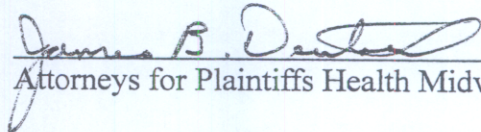
Fax: (573) 634-3358

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I certify that a copy of the above Motion was served via facsimile and first class mail postage prepaid on this 3rd day of December, 2002, upon the following individuals:

Office of Attorney General
Jeremiah (Jay) Nixon
Paul Wilson
Charles Hatfield
Tracy McGinnis
207 W. High Street
Jefferson City, MO 65102


Attorneys for Plaintiffs Health Midwest

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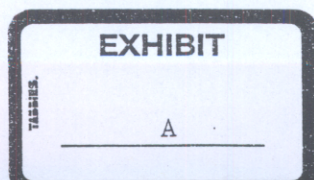
Case No. 02CV326118

AFFIDAVIT OF JOSEPH L. HIERSTEINER

County of Jackson)
) ss
State of Missouri)

Joseph L. Hiersteiner, duly sworn, states:

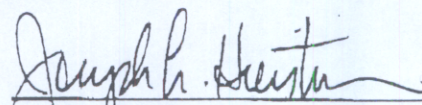
1. I am Executive Vice President and General Counsel of Health Midwest.
2. I, along with several others, assisted in the negotiations of the sale of Health Midwest's assets to HM Acquisitions, L.L.C., a subsidiary of HCA, Inc., for \$1,125,000,000. The Asset Purchase Agreement (the "Agreement") was signed by representatives from each party on November 22, 2002. I am familiar with all the documentation surrounding the sale.
3. Health Midwest has provided the Attorney General for the State of Missouri with a large amount of documents he has requested regarding the sale.
4. Some documents of Health Midwest contain confidential and proprietary information. The officers of Health Midwest have a fiduciary obligation not to reveal this proprietary



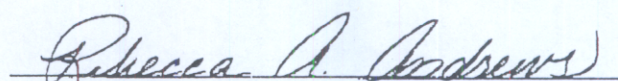
and confidential information.

5. The information Health Midwest seeks to keep confidential is not publicly available and is maintained in a confidential manner. Disclosure of the information would cause oppression and undue burden to Health Midwest.

This concludes my affidavit.


Joseph L. Hiersteiner

Subscribed and sworn to before me this 3rd day of December, 2002.


Notary Public

My commission expires:

REBECCA A. ANDREWS
Notary Public - State of Missouri
County of Jackson
My Commission Expires Jan 3, 2005

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PROTECTIVE ORDER

NOW ON this _____ day of December, 2002, the above-captioned matter comes before the Court on plaintiff Health Midwest's Motion for Protective Order. The parties appear through their respective counsel. A record was made of these proceedings. After reviewing the briefs, hearing the arguments of counsel and otherwise being advised in the premises and for good cause shown, the Court enters the following protective order:

1. Items Covered By This Order

For purposes of this Order, "confidential information" shall include anything which contains, summarizes or refers to any "confidential information" designated as such hereunder. "Confidential information" shall include any information deemed confidential or proprietary by Health Midwest or HM Acquisition, LLC and its parents and/or subsidiaries, including HCA, Inc. (collectively "HM Acquisition").

